

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RAFAEL MADRID-OJEDA,)	
)	
Petitioner,)	8:05cv485
)	
vs.)	MEMORANDUM AND ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter is before the court on the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ("§ 2241 petition"), filed by the petitioner, Rafael Madrid-Ojeda. The petitioner filed his § 2241 petition in the United States District Court for the District of Minnesota, the district of his confinement.

The United States District Court for the District of Minnesota construed the petitioner's § 2241 petition as a Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255, i.e., a challenge to the petitioner's conviction or sentence in Case No. 8:03cr552 in this court. Federal prisoners challenging the legality or validity of their convictions or sentences must do so by a motion pursuant to § 2255 rather than by a petition pursuant to § 2241. See, e.g., United States v. Lurie, 207 F.3d 1075, 1077 (8th Cir. 2000); Carvalho v. Pugh, 177 F.3d 1177, 1178-79 (10th Cir. 1999); Triestman v. United States, 124 F.3d 361, 373 (2d Cir. 1997). Therefore, the Minnesota court transferred the case to this court (filing nos. 3 and 4).

A review of Case No. 8:03cr552 indicates that the petitioner's § 2255 motion is still timely, as the mandate from the Eighth Circuit Court of Appeals in the petitioner's direct appeal issued on July 11, 2005. Because the petitioner may not use 28 U.S.C. § 2241 to

challenge his conviction or sentence in Case No. 8:03cr552, and because the United States District Court for the District of Minnesota has construed the petitioner's § 2241 petition in this case as a § 2255 motion, the above-entitled case must be dismissed without prejudice. Copies of all pleadings and orders filed in this case shall be filed in Case No. 8:03cr552 as a Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255 and related documents. A separate Judgment will be entered herein in accordance with this Memorandum and Order.

SO ORDERED.

DATED this 24th day of October, 2005.

BY THE COURT:

s/Laurie Smith Camp
Laurie Smith Camp
United States District Judge